



November 8, 1999

Ms. Anne M. Constantine
Dallas/Fort Worth International Airport
P.O. Drawer 619428
DFW Airport, Texas 75261-9428

OR99-3140

Dear Ms. Constantine:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 129238.

The Dallas-Fort Worth International Airport Board (the "Board") received a request for all documentation regarding Gene Haffke dba Magic Carpet Limousines. While you claim no exceptions to disclosure under chapter 552 of the Government Code, you attach a letter from Mr. Haffke objecting to the release of the requested documents. We have reviewed Mr. Haffke's letter as well as the submitted information responsive to the request.¹

Section 552.301 of the Government Code dictates the procedure that a governmental body must follow if it wishes to ask the attorney general for a decision determining whether requested information falls within an exception to disclosure. Among other requirements, the governmental body must submit a written statement of the exceptions that apply and written comments explaining why the stated exceptions apply. Gov't Code § 552.301(b), (e)(1)(A). Otherwise, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Act of May 25, 1999, 76th Leg., R.S., ch 1319, § 21, 1999 Tex. Sess. Law Serv. 4500, 4509 (Vernon) (to be codified as an amendment to TEX. GOV'T CODE § 552.302).

You have provided no statement asserting that any exceptions to disclosure might apply in this case. Moreover, the attached letter from Mr. Haffke raises no recognizable exception that would apply to the Board. Therefore, absent a compelling reason to withhold the information, the submitted records must be released. We find that portions of the documents are confidential by other sources of law, and therefore compelling reasons exist to withhold

¹The documents responsive to the request generally consist of commercial driver's permits regarding the operation of limousines and buses, and application materials relating to those permits.

these portions of the requested records. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

First, several of the submitted documents contain social security numbers. Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception applies to confidentiality provisions such as the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). This provision makes social security numbers confidential if they are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). Therefore, if the social security numbers contained in the documents meet the criteria of section 405(c)(2)(C)(viii)(I), they are confidential under this provision as encompassed by section 552.101.

Next, the submitted documents contain a federal tax form. Prior decisions of this office have held that title 26, section 6103(a) of the United States Code renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Generally, any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code is confidential. *Mallas v. Kolak*, 721 F. Supp. 748 (M.D.N.C. 1989); *Dowd v. Calabrese*, 101 F.R.D. 427 (D.C. 1984). Thus, the Board must withhold the marked tax form from disclosure under section 552.101 as information deemed confidential by federal statute.

Section 552.101 of the Government Code also protects information coming within the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. We believe that a small portion of a permit application contained within the submitted information is confidential under section 552.101 in conjunction with common-law privacy, and accordingly, we have marked the information to be withheld.

Finally, we note that the submitted documents contain motor vehicle information such as vehicle identification numbers, license plate numbers, a Texas driver's license number, a copy of a Texas commercial driver's license, and copies of driver permits issued by the City of Dallas and by the Dallas-Fort Worth International Airport ("DFW Airport"). Section 552.130 of the Public Information Act governs the release and use of information obtained from motor vehicle records. Section 552.130 provides as follows:

- (a) Information is excepted from [required public disclosure] if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

The motor vehicle information contained in the submitted documents is the type of information described by section 552.130(a). Therefore, we must determine whether the release of any of the information described by this subsection is authorized under chapter 730 of the Transportation Code.

The stated purpose of chapter 730 of the Transportation Code is "to implement 18 U.S.C. Chapter 123 and to protect the interest of an individual in the individual's personal privacy by prohibiting the disclosure and use of personal information contained in motor vehicle records, except as authorized by the individual or by law." Transp. Code § 730.002. Section 730.004, the chapter's only confidentiality provision,² dictates that "an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record." In order to determine whether this provision prohibits the Board from disclosing any of the motor vehicle information at issue, we must first determine whether the Board is an "agency" under chapter 730. Section 730.003(1) defines "agency" as "any agency of this state . . . that compiles or maintains motor vehicle records." The term, "motor vehicle record" means "a record that pertains to a motor vehicle operator's or driver's license or permit . . . issued by an agency of this state The term does not include a record that pertains to a motor carrier."³ We believe that to the extent that the Board maintains Texas drivers' licenses, limousine driving permits, and driving records as part of its management of airport limousine and shuttle services, the Board compiles or maintains motor vehicle records. Therefore, we find that for the purposes of this case, the Board is an "agency" as defined by section 730.003(1).

²The rest of chapter 730 essentially provides exceptions to prohibited disclosure regarding information that would otherwise be confidential under section 730.004. See Transp. Code § 730.005 *et seq.*

³A "motor carrier" means an individual, association, corporation, or other legal entity that controls, operates, or directs the operation of one or more vehicles that transport persons or cargo over a road or highway in this state. Transp. Code § 643.001.

Accordingly, section 730.004 prohibits the Board from disclosing personal information obtained by the Board in connection with a motor vehicle record. We find that the requested information contains no such personal information. The submitted motor vehicle information, namely a Texas commercial driver's license,⁴ vehicle identification numbers that correspond with limousines used by Magic Carpet Limousines, City of Dallas permits authorizing the operation of limousines, shuttles, and buses in Dallas, DFW Airport permits authorizing the operation of limousine services at the airport, application materials regarding such commercial driving permits, and Texas driver's license numbers that appear within these documents, were not obtained by the Board in connection with motor vehicle records. Rather, they were obtained by the Board in connection with motor carrier records. Accordingly, section 730.004 exempts these types of motor carrier information from prohibited disclosure.

As explained above, section 552.130(b) of the Government Code provides for the release of motor vehicle information if such a release is authorized by chapter 730 of the Transportation Code. By exempting information obtained in connection with motor carrier records from prohibited disclosure, chapter 730 authorizes the release of such information. *See* Transp. Code § 730.004. Therefore, we conclude that the motor carrier information contained within the requested documents must be released under section 552.130(b) of the Government Code in conjunction with chapter 730 of the Transportation Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\nc

Ref: ID# 129238

⁴This driver's license, issued by the Texas Department of Public Safety, is specifically labeled as a commercial license.

Encl: Marked documents

cc: Mr. David Nazem
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(w/o enclosures)